

SENATE BILL REPORT

SB 5067

As of January 20, 2015

Title: An act relating to informant and accomplice evidence and testimony.

Brief Description: Addressing informant and accomplice evidence and testimony.

Sponsors: Senators Padden and Darneille.

Brief History:

Committee Activity: Law & Justice: 1/20/15.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Melissa Burke-Cain (786-7755)

Background: Accomplices and paid criminal informants provide useful information during criminal investigations and may be important trial witnesses. Accomplices and informants may be unwilling to testify in court unless they receive something in return. Commonly accomplices or informants agree to testify because the state offers a valuable incentive like a dismissed charge, immunity, or a plea bargain. A person already in custody, sometimes called a jailhouse informant, may come forward with an offer of information about a crime in exchange for favorable treatment.

Courts recognize the risk of false or exaggerated testimony when compensated witnesses testify for the state at criminal trials. Courts reduce the risk by telling the jury to use extra caution when evaluating compensated testimony or unverified accomplice testimony. The federal Ninth, Fifth, and Seventh Circuit Courts of Appeals allow a court to tell the jury that a witness received something valuable in exchange for testifying whether the witness testifies for the state or for the defendant because the credibility risk may be the same.

The federal Ninth Circuit Court of Appeals uses a model jury instruction to inform the jury when a compensated witness has testified for the state or the defendant and inform the jury to consider the testimony with extra care because the compensation may influence the reliability of the evidence.

Current Washington laws do not address the potential for undue influence over a compensated witness's testimony. A recommended criminal jury instruction addresses accomplice testimony. This jury instruction says that accomplice testimony should be

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carefully examined in light of the other evidence and acted on with great caution. The instruction must be given if the accomplice testifies for the state and the defendant requests it or if the accomplice testimony is not corroborated by other evidence. It is not given when an accomplice testifies for the defendant.

Summary of Bill: New definitions identify the kinds of compensated witnesses who may give less reliable testimony in a criminal trial because of the value received in exchange for the testimony. In a criminal trial, the judge and jury must consider the potential for undue influence when a witness receives compensation in exchange for testimony. Juries must examine compensated witness testimony with greater caution whether the witness testifies for the state or the defendant.

A jury cannot convict a defendant based only on uncorroborated accomplice or informant testimony unless:

- the judge cautions the jury to examine the evidence carefully; and
- the jury finds the testimony true beyond a reasonable doubt.

If an accomplice's guilty plea arises out of the same events for which a defendant is on trial, the guilty plea may not be considered as evidence against the defendant. The jury may consider the accomplice's guilty plea when it evaluates the credibility of the testifying accomplice.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The goal is not to make things more difficult for prosecutors but to get to more valid testimony and a just decision. Prosecutors may have some training to prevent bringing bad informant testimony to the court, but that is not sufficient to solve the problem. The federal system is better. The bill follows the federal system. False testimony by compensated informants and accomplices contributes to wrongful convictions. There is a lack of transparency about witnesses who receive a promise or it is implied that something favorable will be provided if an informant or accomplice testifies that would not require disclosure to the court. Jury instructions that provide some protection from decisions based on false testimony by jury instructions alone are not enough. The bill is a good concept. The pattern jury instructions only address accomplice testimony and general instruction on witness bias. Nothing in current instructions is specific to the concern about testimony from informants.

CON: There is always concern about the veracity of any witness. The current law and practice in the courts already does what the bill proposes to do by making more information available to judges and juries. Advance agreements must be disclosed. Washington has a good system already with current pattern jury instructions. Washington's state court system preserves witness credibility decisions for the Trier of Fact. The state court system is

different from the federal system. State court judges cannot comment on the evidence as a federal judge can. The bill goes far beyond paid informants in its broad definition of consideration. The proposed definition is too broad.

Persons Testifying: PRO: Senator Padden, prime sponsor; Lara Zarowsky, Innocence Project NW; Mark Muenster, WA Assn. of Criminal Defense Lawyers.

CON: Tom McBride, WA Assn. of Prosecuting Attorneys.